

# THE IMPLEMENTATION OF GOVERNMENT REGULATION NO. 86 OF 2018 ON AGRARIAN REFORM IN CONNECTION WITH LAW NO. 5 OF 1960 ON THE BASIC AGRARIAN LAW

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**Abstract.** This research discusses the implementation of agrarian reform and land registration in Indonesia, with a focus on the correlation between the Land Registration Information System (PTSL) and the Basic Agrarian Law (UUPA). The study examines the process of implementing agrarian reform in the village of Lontar, Tirtayasa Subdistrict, Serang Regency, and analyzes changes in land ownership structure to determine the effectiveness of agrarian reform in promoting equitable land ownership. The correlation between PTSL and UUPA, when viewed from the implementation of government programs, PTSL is a program implemented by the government as part of efforts to enhance legal certainty and systematic land management. UUPA provides a legal foundation for the government to implement the PTSL program, including aspects such as land acquisition, compensation, and spatial planning. Agrarian reform remains an important thing to do in Indonesia given the high cases of land or land conflicts that occur. One of the contributing factors is the lack of clarity of the map that is a reference for all parties concerned. To follow the national land policy, the implementation of agrarian resource management needs to be carried out through six activities, namely: land use arrangement, land tenure regulation, land parcel data collection, granting land rights, registering land rights and their transition (certification), and resolving land disputes. To carry out the management of agrarian resources, proper, accurate, and strong database administration is needed.

**Keywords:** PTSL; UUPA; agrarian

## I. INTRODUCTION

Farmers and fishermen play a crucial role in meeting the food needs of the Indonesian society. Therefore, it is essential to improve agricultural and fisheries commodities. Agrarian conflicts and land disputes have become disruptive factors affecting the effectiveness of farming and fishing livelihoods. There are at least two triggers for agrarian conflicts: first, the inadequate enforcement of laws and regulations concerning agrarian issues, including land issues, land status and ownership, land rights, and methods of resolving land disputes. Second, the sluggishness and injustice in the process of land dispute resolution, which eventually leads to conflicts. The Basic Agrarian Principles Law No. 5 of 1960 is the fundamental law that governs land and contains 58 articles, mostly related to land regulations. The Basic Agrarian Law (UUPA) regulates the uneven reform of land structures to achieve fairness, resolve land disputes, and improve the welfare of society after agrarian reform. However, the implementation of agrarian reform has not been fully realized due to many deviations in its execution, primarily caused by conflicting regulations [1]. For example, the issuance of laws on forestry, mining, plantations, water resources, and other laws that disregard the existence of the Basic Agrarian Law (UUPA) leads to overlapping regulations between ministries, often triggering disputes and conflicts.

The government's basis for regulating land, especially in legal and land utilization aspects, is found in Article 2 Paragraph (2) of the Basic Agrarian Law (UUPA) [2]. The provision, use, supply, and maintenance of land stated in Article 2 Paragraph (2) give the authority to regulate it and govern relationships between individuals and legal actions related to land, including the ability to choose and control legal relationships between individuals and land. Therefore, legal subjects have the right to land granted by the government based on Article 4 of the Basic Agrarian Law (UUPA), where legal subjects, whether individuals or legal entities, have the same rights to land, which are civil rights as stated in Article 16 of the Basic Agrarian Law (UUPA). To ensure legal certainty and order in society, law enforcement is necessary [3]. One of the efforts to provide legal certainty for land rights holders is to grant land rights. The purpose of the Basic Agrarian Law (UUPA) is to provide legal certainty, and it instructs the government to conduct comprehensive land registration in every region throughout the Indonesian archipelago to ensure legal certainty and the rights, also known as *Rechskadaster*, as regulated in Article 19 of the Basic Agrarian Law (UUPA). Articles 19 Paragraph (2) letter c, Article 23 Paragraph (2), Article 32 Paragraph (2), and Article 38 Paragraph (2) regulate the documents that serve as strong evidence in land registration, which is considered essential for its development [4].

Agrarian reform is a restructuring of land ownership, use, and utilization through asset and access arrangements for the prosperity of the Indonesian people, carried out by the central and regional governments based on Government Regulation No. 19 of 2018. Agrarian reform aims to: (1) reduce inequality in land ownership and possession, (2) address agrarian disputes and conflicts, (3) create sources of prosperity and welfare based on agrarian resources, (4) create jobs, (5) improve community access to economic resources, (6) increase food security, and (7) improve and maintain quality of life [5]. The loss of livelihood among many farmers and fishermen has resulted in unemployment, leading to an increase in poverty in remote areas, where most of the population consists of farmers and fishermen in rural areas. Therefore, agrarian reform is intended to narrow the gap in land ownership and possession, which is expected to bring about a new hope for comprehensive social and economic changes. However, in reality, agrarian reform has led to new problems. Agrarian reform is an effort by the government to restructure land ownership and use for the benefit of small farmers and farm laborers, and it has undergone developments and changes in its content, nature, objectives, and conceptual foundations. Therefore, agrarian reform is considered an unresolved issue. Furthermore, based on the legal foundation of People's Consultative Assembly Decree No. IX of 2001, land reform is defined as a continuous process related to the rearrangement of land ownership, possession, use, and utilization of agrarian resources, carried out to achieve legal certainty, legal protection, justice, and prosperity for all Indonesian people. It can be seen that land reform focuses on two main aspects: "ownership and possession" on one side, and "use and utilization" on the other side. The rearrangement of ownership and possession is the main activity of land reform, primarily through land redistribution.

The Indonesian government has made various efforts to improve the agrarian sector. The fall of the New Order regime was a starting point for the improvement and rearrangement of the legal system governing agrarian issues in Indonesia. The reorientation of agrarian policy was recognized as essential to achieve social justice and the welfare of society. One of the ongoing efforts for improvement is the resurgence of agrarian reform as a national agenda, as stipulated in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). This improvement is also evident through People's Consultative Assembly Decree No. IX/2001 and People's Consultative Assembly Decree No. V/2003, which emphasize the importance of implementing agrarian reform for justice and social welfare [6]. Rationally, agrarian reform programs and their supporting measures should contribute to improving the welfare of farmers who benefit from them. When a community is provided with assistance in the form of assets and production access, it should lead to an improvement in their living standards. However, the implementation process of agrarian reform programs needs to be further examined.

In essence, agrarian reform is a structural change based on the relationships between agrarian subjects regarding access (ownership and utilization) to agrarian objects.

However, in concrete terms, agrarian reform is directed towards changing the land ownership structure and ensuring land ownership certainty for the people who utilize the land and its natural resources. In practice, agrarian reform is often associated with land reform, which essentially refers to the restructuring of land ownership, possession, utilization, and use. The concept of land reform has been expanded to emphasize the strategic role of land and agriculture in development. In essence, agrarian reform has broader meanings and dimensions than just land reform. However, it is often overlooked that many farmers who have obtained land through land reform eventually relinquish their land due to a lack of access to economic activities, financial resources, business management, and agricultural technology. As a result, land ownership does not contribute to improving farmers' welfare. This situation has prompted the implementation of agrarian reform, which includes land redistribution (asset reform) and supporting programs such as irrigation, credit, extension services, education, marketing, and others (access reform). Thus, agrarian reform consists of two pillars: asset reform and access reform.

The implementation of agrarian reform envisioned by People's Consultative Assembly Decree No. 9 of 2001 is in line with the program of Jokowi Ma'ruf Amin, which targets four categories of land: 1) legalized assets subject to disputes between community groups and companies/government institutions, as well as lands that have been granted to the community but have not obtained legal certainty for the right holders; 2) Agrarian Reform Object (TORA) land to be redistributed to rural poor communities; 3) State forests allocated to villages and rural communities through customary forest schemes and social forestry, including Community Forests (HKm), Village Forests (HD), People's Plantations (HTR), and others; and 4) Management and acquisition of village assets for cultivation by poor farmer households collectively. The first and second categories encompass approximately 9 million hectares of land. To address the aforementioned issues, further research is needed to examine the social facts related to agrarian reform in the village of Lontar, Tirtayasa Subdistrict, Serang Regency. How is the implementation process of agrarian reform in the village of Lontar, Tirtayasa Subdistrict, Serang Regency? Additionally, a deeper analysis of changes in land ownership structure is necessary to determine whether agrarian reform has resulted in more equitable and fair land ownership, or if there are other facts indicating otherwise.

In the case of Lontar village, most of the land has been occupied by immigrant farmers, laborers, and migrants who do not have personal ownership rights but work on government-owned lands such as ponds and paddy fields. These farmers are considered tenants with certificates of permission to cultivate the land, and unfortunately, when the land is needed by the government or third parties, the farmers give up the land without any compensation, even though they have evidence of ownership that has been passed down through generations.

## II. RESEARCH METHODS

The research method used in this article is normative juridical. Normative legal research is a process of finding legal rules, principles, and doctrines to address legal issues that arise [7]. The data collection technique used in this article is literature study. The sources of research data include primary legal materials and secondary legal materials. Primary legal materials consist of relevant laws and regulations, while secondary legal materials refer to legal study books written by legal experts, legal articles, scholarly opinions, and relevant legal symposium findings. The analysis method employed in this article is qualitative descriptive method. Description involves determining the content of legal rules as accurately as possible, making it an interpretative activity as well.

## III. RESULTS AND DISCUSSION

### 1. Outer Model Test Analysis Results

#### *Convergent Validity*

Land registration is a series of activities carried out by the Government continuously, consistently, and systematically. The principles of land registration in Indonesia are simplicity, security, affordability, modernity, and openness. The principles underlying land registration activities in Indonesia prioritize the interests of the community in terms of ownership of a land parcel or condominium unit in accordance with the applicable provisions at an affordable cost. Land registration is regulated in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Article 19 paragraph (1) of the UUPA states that [6]: “To ensure legal certainty, the Government conducts land registration throughout the territory of the Republic of Indonesia, in accordance with the provisions regulated by Government Regulations.”

When examined, the correlation between PTSL and UUPA regarding agrarian law aspects in Indonesia can be seen from several aspects. First, in terms of providing legal certainty, UUPA provides a legal basis for the implementation of PTSL with the aim of providing legal certainty regarding land ownership to the community. PTSL is a program implemented based on UUPA to document and regulate land systematically, thus providing certificates as valid proof of ownership. Second, in terms of the principles of Initiative and Community Participation, UUPA contains principles of community participation in land management, including land registration. On the other hand, PTSL is designed to involve the community in the process of land measurement and registration with the aim of encouraging active community participation in the systematic land management. Third, in terms of protecting the rights of farmers, UUPA bases the rights of farmers related to land on fair agrarian principles, including ownership, use, and utilization of land. PTSL can contribute to providing protection for the rights of farmers by providing legal certainty through certificates, which can serve as a tool to strengthen ownership claims and reduce agrarian conflicts. Fourth, in resolving agrarian conflicts, UUPA

provides a legal framework for resolving agrarian conflicts, including conflicts related to land. PTSL can help reduce agrarian conflicts by providing legal certainty and reducing uncertainties related to land ownership. Lastly, in relation to the correlation between PTSL and UUPA, when viewed from the implementation of government programs, PTSL is a program implemented by the government as part of efforts to enhance legal certainty and systematic land management. UUPA provides a legal foundation for the government to implement the PTSL program, including aspects such as land acquisition, compensation, and spatial planning. The correlation between PTSL and UUPA demonstrates that the PTSL program is based on the legal framework of UUPA to provide legal certainty, protect the rights of farmers, and resolve agrarian conflicts. Effective implementation of PTSL will strengthen the implementation of UUPA and bring benefits to farmers in terms of land ownership and management.

#### *Implementation of Agrarian Reform in Indonesia*

The goal of agrarian reform in Indonesia is to change the way land is controlled, owned, used, and utilized, with the aim of realizing justice and legal certainty in terms of land ownership, use, and utilization. The implementation of Agrarian Reform, as stipulated in Article 3 of Presidential Regulation No. 86 of 2018 concerning Agrarian Reform, is carried out by the Central Government and Regional Governments through the stages of planning and implementing Agrarian Reform. This planning stage, as described in Article 4, includes planning for Asset Structuring to regulate the control and ownership of land that is the object of Agrarian Reform (TORA), planning to regulate access to use, utilization, and production in TORA, planning for legal certainty and legislation related to TORA, planning for handling agrarian disputes and conflicts, and planning other activities that support the implementation of Agrarian Reform. The implementation of Agrarian Reform in Indonesia focuses on the concept of land redistribution by distributing land controlled by the State, maximum excess land, absentee land, and other State land that has been designated as land objects of Agrarian Reform to sharecroppers and smallholder farmers. However, overall, in Law No. 86 of 2018 concerning Agrarian Reform, there are three main things in Agrarian Reform, namely asset structuring, access arrangement, and dispute resolution. This approach is in line with the National Strategy for the Implementation of Agrarian Reform 2015-2019, which includes strengthening the regulatory framework and resolving agrarian conflicts, structuring land tenure and ownership of Agrarian Reform (TORA) objects, legal certainty and legalization of rights to TORA, as well as community empowerment in the use of TORA [8].

The lands that have been designated as land objects of Agrarian Reform (TORA) are distributed for agricultural and non-agricultural purposes. In the context of agriculture, redistribution is carried out to subjects of Agrarian Reform with a maximum land area limit of 5 hectares, in accordance with the availability of TORA, and accompanied by the granting of certificates of ownership rights or Shared Ownership Rights. Meanwhile, redistribution for non-

agricultural interests involves activities outside the agricultural sector, both in urban and rural areas [9].

The implementation of Agrarian Reform in Indonesia cannot be separated from the conflicts that occur in the process. In the midst of the ongoing transition process in Indonesia, it is important to present historical awareness in an effort to transform an agrarian society into an industrial society [10]. If most of our society is more involved in subsystem agriculture and less focused on increasing productivity for trade and industry, it must be recognized that these conditions are caused by structural and cultural pressures that occurred during the colonial period as well as the instability of the post-colonial political system. Therefore, it is not correct to conclude that the characteristics of our farmers are less creative and productive because they rely more on land ownership than developing and optimizing their production. The implementation of agrarian reform in Indonesia aims to change the structure of control, ownership, use, and utilization of land to ensure the realization of justice and legal certainty in terms of control, ownership, use, and utilization of land. The implementation of Agrarian Reform is regulated in Article 3 of Presidential Regulation No. 86 of 2018 concerning Agrarian Reform, which is carried out by the Central Government and Regional Governments through the stages of planning and implementing Agrarian Reform. This planning stage, as described in Article 4, includes planning for Asset Structuring related to the control and ownership of Land Objects of Agrarian Reform (TORA), planning related to structuring access in the use, utilization, and production of TORA, planning for legal certainty and legislation related to TORA, planning for handling Agrarian Disputes and Conflicts, and planning other activities that support the implementation of Agrarian Reform.

The implementation of Agrarian Reform in Indonesia has a main focus on the concept of land redistribution by distributing land controlled by the State, including maximum excess land, absentee land, and other State lands that have been designated as objects of Agrarian Reform, to sharecroppers and smallholder farmers. However, overall, in Law No. 86 of 2018 concerning Agrarian Reform, there are three main things that are the focus of Agrarian Reform, namely asset structuring, access arrangement, and dispute resolution. This approach is in line with the National Strategy for the Implementation of Agrarian Reform 2015-2019, which includes strengthening the regulatory framework and resolving agrarian conflicts, structuring land tenure and ownership of Agrarian Reform objects, legal certainty and legalization of land rights for Agrarian Reform objects, as well as community empowerment in the use of land for Agrarian Reform objects [11]. The lands that have been designated as land objects of Agrarian Reform (TORA) are distributed for agricultural and non-agricultural purposes. In the context of agriculture, redistribution is carried out to subjects of Agrarian Reform with a maximum land area limit of 5 hectares, in accordance with the availability of TORA, and accompanied by the granting of certificates of ownership rights or Shared Ownership Rights. Meanwhile, redistribution for non-agricultural interests involves activities outside the

agricultural sector, both in urban and rural areas. Land redistribution for non-agricultural purposes can be carried out through land consolidation, which is accompanied by the provision of title certificates or title certificates for flats. Land redistribution is carried out for smallholders or those who do not own land in their depleted areas divided into utilization rights granted by the state to plantation companies, and involves land granted Building Use Rights or other types of rights.

Agrarian reform should not be regarded as a mere land distribution project, but should be directed at improving the welfare of farmers and revitalizing agriculture and rural areas as a whole. Therefore, agrarian reform must be an effort that involves various parties in the framework of structural structuring to guarantee people's rights to agricultural resources through Land Reform. Land reform should be part of a broader development effort, which includes aspects of productivity and sustainability of land assets that have been given. This includes the fulfillment of basic rights, such as education, health, as well as the provision of capital support, technology, management, infrastructure, markets, and others. The first component is referred to as asset reform, while the second component is referred to as access reform. The combination of these two types of reforms is known as Land Reform plus [12]. So far, the Ministry of Agrarian and Spatial Planning/National Land Agency (BPN) seems to only focus on land certification targets. With the Regulation of the Minister of ATR on procedures for determining communal rights over the land of customary law communities and communities within certain areas, it can be seen that the Ministry of ATR / BPN appears to be controlled by market interests. On the one hand, the government is committed to land redistribution, but tends to facilitate investment, such as in the palm oil business. In addition, the presidential regulation on the implementation of agrarian reform has not yet been finalized. Agrarian reform is still on the political agenda, not improving people's welfare. There are three important steps that need to be taken immediately regarding land. First, in agrarian reform efforts, which on the one hand aims to overcome poverty (which is one of the principles of implementing agrarian reform), and on the other hand, considering domestic and global developments since 1960 until now, Basic Agrarian Law No. 5/1960 which is strengthened by MPR Decree No. IX/2001 concerning Agrarian Reform and Natural Resources, It must be revised and the results must be implemented consistently and decisively. The revision can be in the form of issuance of the Agrarian Reform Law and must be carried out as soon as possible to overcome the legal vacuum related to the operationalization of the agrarian reform program. The national agrarian reform program planned by the government requires a strong and comprehensive legal basis. Second, the distribution of 8.15 million hectares of land must be accompanied by empowering land recipients so that they are able to make optimal use of it, namely by developing productive businesses. In addition, strict supervision is needed because there are indications that some of the land that has been distributed is sold, mortgaged, or licensed by the

recipients. Third, the process of agricultural land certification must be accelerated or simplified; spatial plans should protect productive and fertile agricultural land; and the purchase of farmland by force or for non-essential purposes (such as golf courses, luxury apartments, luxury shops) must be stopped.

The implementation of public policy in the national land sector of various regimes is largely determined by factors of political interest. Therefore, in evaluating the implementation of its policies, it is necessary to update oriented to justice, welfare, with the principles of decentralization and good governance in land resources management. All of this is done in order to achieve a common goal, which is to realize a just and prosperous society based on Pancasila and the 1945 Constitution. One approach to improve the welfare of farmers and help them get out of poverty is to improve farmers' access to land. In the current state of land tenure, it is necessary to implement real agrarian reform policies to increase land ownership by smallholders and improve the welfare of farmer households. The creation of a balance between the interests of the public and financiers is largely determined by the government's political policy in providing equal protection to both groups. In this case, the government should play a supervisory role that pays attention to these two interests. Therefore, a paradigm shift in the relationship between the three parties (farmers, communities, and financiers) is urgently needed.

#### IV. CONCLUSION

The correlation between PTSL and UUPA, when viewed from the implementation of government programs, PTSL is a program implemented by the government as part of efforts to enhance legal certainty and systematic land management. UUPA provides a legal foundation for the government to implement the PTSL program, including aspects such as land acquisition, compensation, and spatial planning. Agrarian reform remains an important thing to do in Indonesia given the high cases of land or land conflicts that occur. One of the contributing factors is the lack of clarity of the map that is a reference for all parties concerned. To follow the national land policy, the implementation of agrarian resource management needs to be carried out through six activities, namely: land use arrangement, land tenure regulation, land parcel data collection, granting land rights, registering land rights and their transition (certification), and resolving land disputes. To carry out the management of agrarian resources, proper, accurate, and strong database administration is needed.

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